



Rural City of
Wangaratta

Minutes

For the Scheduled Council Meeting
Council Chambers, Municipal Offices
62-68 Ovens Street, Wangaratta
3pm 28 May 2024

Contents

1.	Acknowledgement of Traditional Owners	5
2.	Opening Prayer	5
3.	Present	5
4.	Absent.....	5
5.	Acceptance of Apologies & Granting of Leave of Absence	5
	Order of Business	6
6.	Citizen Ceremony.....	6
7.	Confirmation of Minutes	7
8.	Conflict of Interest Disclosure.....	7
9.	Reception of Petitions	7
10.	Hearing of Deputations.....	7
	Presentation Of Reports.....	8
11.	Councillor Reports.....	8
	Officers' Reports	9
12.	Executive Services.....	9
	12.1 Rescission of Motion (04:30)	9
13.	Corporate and Leisure.....	14
	13.1 Audit and Risk Independent Member Remuneration (39:20)	14
	13.2 September Scheduled Council Meeting - Date Change (41:10)	17
14.	Community and Infrastructure	18
15.	Sustainability and Culture.....	19
	15.1 Road Deviation and Land Exchange at Old Hume Highway Glenrowan (42:24).....	19
	15.2 Report for noting: Procurement Exemptions for Development Contributions Plan Projects (44:10)	27
16.	Special Committee Reports.....	30
17.	Advisory Committee Reports.....	30
18.	Minutes of Advisory Committee Meetings.....	30
19.	Notices of Motion	30

20.	Urgent Business.....	30
21.	Public Question Time (46:46).....	31
22.	Confidential Business.....	31
23.	Closure of Meeting.....	31

Unconfirmed

1. Acknowledgement of Traditional Owners

We acknowledge the traditional owners of the land on which we are meeting. We pay our respects to their Elders and to Elders from other communities who may be here today.

2. Opening Prayer

Almighty God, we humbly ask thee to bless and guide this council in its deliberations so that we may truly preserve the welfare of the people whom we serve. Amen

3. Present

Councillors:

Mayor Dean Rees, Deputy Mayor Harvey Benton, Cr Irene Grant, Cr David Fuller, Cr Harry Bussell, Cr Ashlee Fitzpatrick, Cr Jack Herry

Officers:

Brendan McGrath, Chief Executive Officer; Marcus Goonan, Director Community and Infrastructure; Stephen Swart, Director Sustainability & Culture; Juan Hernandez, Acting Director Corporate and Leisure

Administration:

Executive Services Coordinator; Executive Assistant Corporate and Leisure

4. Absent

Officers:

Sarah Brindley, Director Corporate and Leisure

5. Acceptance of Apologies & Granting of Leave of Absence

Resolution:

(Moved: Councillor D Rees/Councillor I Grant)

That Cr Irene Grant be granted leave of absence for the period 15 June 2024 to 2 July 2024.

That Mayor Dean Rees be granted leave of absence for the period 21 June 2024 to late July 2024

Carried

Order of Business

6. Citizen Ceremony

Nil

Unconfirmed

7. Confirmation of Minutes

Resolution:

(Moved: Councillor D Fuller/Councillor A Fitzpatrick)

That Council read and confirm the Minutes of the Scheduled Meeting of 30 April 2024 and the Special Meeting of 6 May 2024 as a true and accurate record of the proceedings of the meetings subject to the amendment of the date in item 14.1 from the April Scheduled Council Meeting.

Carried

8. Conflict of Interest Disclosure

In accordance with section 130 of the Local Government Act 2020 a councillor who has a conflict of interest in respect of a matter must disclose the conflict of interest in the manner required by Council's Governance Rules and exclude themselves from the decision making process in relation to that matter, including any discussion or vote on the matter and any action in relation to the matter.

Clause 28.1 of Council's Governance Rules requires a councillor to indicate that they have a conflict of interest by clearly stating:

- (a) the item for which they have a conflict of interest; and
- (b) whether their conflict of interest is general or material; and
- (c) the circumstances that give rise to the conflict of interest.

Immediately prior to the consideration of the item in which they have a conflict of interest, a councillor must indicate to the meeting the existence of the conflict of interest and leave the meeting.

A councillor who discloses a conflict of interest and leaves a Council meeting must not communicate with any participants in the meeting while the decision is being made.

9. Reception of Petitions

10. Hearing of Deputations

Presentation Of Reports

*For full transcript, please refer to the recording on the [Rural City of Wangaratta YouTube channel](#).
Time markers are noted in (minutes:seconds) format.*

11. Councillor Reports

Nil

Unconfirmed

Officers' Reports

12. Executive Services

12.1 Rescission of Motion (04:30)

Meeting Type:	Scheduled Council Meeting
Date of Meeting:	28 May 2024
Category:	Strategic
Author:	Governance & Reporting Advisor
Approver:	Chief Executive Officer

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to rescind a resolution of the 30 April 2024 Scheduled Council Meeting relating to a notice of motion by Councillor Harvey Benton.

Recommendation:

(Moved: Councillor J Herry/Councillor H Bussell)

That Council:

1. Rescind the Council Resolution at the 30 April 2024 Scheduled Council Meeting relating to the item at 19.1 of that meeting's agenda, namely:

That:

1. The Rural City of Wangaratta Council develop and resource an advocacy action plan as a matter of urgency to appeal the current legislation which limits the community's ability to contest a planning decision to Victorian Civil Administration Tribunal (VCAT).
2. The Rural City of Wangaratta Council asks the State Government to support the protection of agricultural land for food, fibre and viticultural production as any significant change to our rural landscape will have adverse impacts economically, socially and environmentally across the whole municipality. The Action Plan would be communicated to, and support sought, from all political representatives, peak industry bodies and government agencies. Peak Local Government bodies and agencies would also be lobbied for support.

Councillor Jack Herry requested a division and the results were:

For: Councillor H Bussell and Councillor J Herry

Against: Councillor H Benton, Councillor A Fitzpatrick, Councillor D Fuller, Councillor I Grant and Councillor D Rees

The Motion was lost and reverts back to the original Notice of Motion as above

Background

Councillor Harvey Benton presented a notice of motion at the 30 April 2024 Scheduled Council Meeting relating to the State Government's new legislation which has taken away the community's right to appeal a planning decision to VCAT.

A councillor may propose a motion to rescind (revoke) or alter a previous resolution of Council if the previous resolution has not been acted on and the effect of the rescission motion would not place the Council at significant legal, financial or other risk.

Under clause 19.1(5) of Council's Governance Rules, a Notice of Rescission must be in writing and delivered to Council's Chief Executive Officer no later than 10 days prior to the next Scheduled Council Meeting.

Councillor Jack Herry has presented a notice of rescission (**Attachment 1**) to formally rescind the previous motion.

Implications

Policy Considerations

There are no specific Council policies or strategies that relate to this report.

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

There are no legal/statutory implications identified for the subject of this report.

Social and Diversity

There are no social impacts identified for the subject of this report.

Equity Impact Assessment (EIA)

There are no equity impacts identified for the subject of this report.

Environmental/Sustainability Impacts

While the development of an advocacy action plan is likely to have a limited direct environmental/sustainability impact, the potential for increased protection of existing agricultural land from large scale renewable energy developments may retain the biodiversity benefits that exist in remnant vegetation and/or in conservation plantings on agricultural land. Conversely the potential increase in appeals to decisions to grant planning permit applications for large energy generation facilities may impact on the ability to meet emission reduction targets.

Risk Management

There are no risks associated with this report.

Consultation/Communication

Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Options for Consideration

Councillors have two options:

1. Support the notice of rescission which has the effect or 'rescinding' (revoking) the previous resolution; or
2. Decide against supporting this notice of rescission; in this case, the previous resolution remains unchanged.

Conclusion

Councillor Jack Herry has presented a notice of rescission relating to a Council resolution of 30 April 2024. The previous resolution resolved that Council develop and resource an advocacy plan to appeal the current legislation which limits the community's ability to contest a planning decision to Victorian Civil Appeals Tribunal (VCAT) and that Council ask the State Government for wider protections relating to agricultural land.

Attachments

- 1 Notice of Rescission 

Public Questions:

Brendan Perry-Van Der Heyden (07:12)

Notice of motion no.69

My question is, is any of the Councillors that voted no to this proposed motion, hold shares in solar farms or receiving funding from solar farms?

Cr Bussell responded: no shares.

Cr Fuller responded: no shares.

Cr Herry responded: no shares.

Mike Burston (08:25)

Notice of motion no.69

I'm concerned about the proposal to rescind the notice of motion from Harvey Benton. If successfully rescinded, will it contribute to state government "taking in" adjudication of Solar farm proposals to the detriment of locals?

Mayor Dean Rees responded:

The State Government already take control of solar farms and the application process, unless the solar farm is under one megawatt it is under Council's jurisdiction.

Tom James (09:19)

Notice of motion no.69

Will Cr Benton vote against all planning permits to subdivide or build on productive farming land or is it only solar farms he is against?

Will Cr Benton vote against any planned housing estates around Wangaratta as this land is also productive farmland and can never be farmed again?

Deputy Mayor Harvey Benton responded:

I find the question a little bit presumptuous quite frankly because under the Local Government Act, I'm not going to be condemned to the Local Government Act, I'll judge every decision making that comes up across this table by its merits, so until that decision comes in, or recommendations come in, that's where it sits.

Renee Bergamin (10:13)

Notice of motion no.69

**What sustainable energy will you look at if not solar ? Nuclear ? Wind ? Hydro ?
Because Coal and gas won't last forever when our children are adults**

Also how does a farmer make money off the land without a feedlot or dairy?

Without one or the other you need a second income to support the farm costs which means your partner or yourself needs to be working full time off the farm to help run the farm, it is not profitable to only run animals as there is limited food and that costs money too.

Mayor Dean Rees responded:

Council's role in decision making about form of sustainable energy generation that takes place and its location is very limited. Recent changes made by the State Government to planning processes for such facilities removes Council's and our community's ability to challenge the Minister for Planning's decisions about these facilities at VCAT. The notice of motion is about these changes.

We acknowledge many farmers in our municipality have off farm income. We also note that many farmers in our municipality work on their farms 100% and don't have a feedlot or dairy to make good money.

John Conroy (12:00)

Notice of motion no.69

Cr Herry, Dean Rees has stated he is here to preserve the rights of the people and their welfare. Do you not want people to have the right to go to VCAT?

Cr Herry responded:

There's a broader community to consider, not just the people that are directly involved in that case at VCAT. A solar farm obviously has a relationship, renewable energy generation facilities have a relationship, with the whole community, and I don't think we can forget that...There is a certain time consideration and an urgency for transitioning energy sources, energy being an absolutely critical, fundamental aspect of our society so there's an urgency around that and how we navigate that. Not easy to do in a short time frame. As many people say, it would have been good if we had started a lot harder and faster 10-15 years ago, and I think that the processes have sometimes led to really long, protracted delays...Look at housing – it's a critical, fundamental good of value to society, the same thing has been done with housing, providing the opportunity for people to go through expedited processes where appeal processes are removed because we recognise there's a high need for housing in our society and we recognise the critical value of that so I mean it is one and the same to me, energy and housing. If you're making the argument that there should never be exemptions to these processes, well then why would you not apply that across the board.

13. Corporate and Leisure

13.1 Audit and Risk Independent Member Remuneration (39:20)

Meeting Type: Scheduled Council Meeting
 Date of Meeting: 28 May 2024
 Author: Governance & Reporting Advisor

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to consider increasing the remuneration levels for independent members of the Audit and Risk Committee.

Resolution:

(Moved: Councillor I Grant/Councillor H Benton)

That Council:

- Endorses a remuneration increase of 2.5% for each independent member of the Audit and Risk Committee to take effect from 29 May 2024.

Carried

Background

Council's Audit and Risk Committee ('the Committee') monitors Council reporting, governance and compliance for sound financial and risk management and oversees Council's internal and external audit programs. The Committee comprises two Councillor members and four independent members who bring expertise in financial management, risk and public sector management.

Under the Audit and Risk Committee Charter, a review of the levels of remuneration for independent members of Council's Audit and Risk Committee is to be conducted at least annually. The remuneration for the Rural City of Wangaratta Audit & Risk Committee independent members was increased by 2.5% in April 2023.

To provide a consistent level of remuneration, a 2.5% increase is recommended. Council must formally endorse an increase by council resolution in order for this recommendation to come into effect. 2.5% will equate to the following increased remuneration amounts:

Position	Current Rate per meeting	Proposed Rate per meeting
Independent Member	\$640.63	\$656.78
Independent Member –	\$768.75	\$787.96

Committee Chair		
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This review does not include remuneration of Councillor members as Councillor allowances are determined separately under Section 39 of the Local Government Act.

Implications

Policy Considerations

This review is consistent with the requirements of the adopted Audit & Risk Committee Charter.

Financial/Economic Implications

Any increase to the remuneration will be incorporated into the 24/25 budget.

Legal/Statutory

Section 53 (6) of the Local Government Act specifies that a Council may pay a fee to a member of an Audit and Risk Committee who is not a Councillor of the Council.

Social and Diversity

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

Strategic Links

Council Plan 2021 – 2025

This report supports the 2021-2025 Council Plan through the following objectives and actions:

1. Strengthening our Leadership

1.1.1 Provide open and transparent communication to the community to build trust, respect and understanding.

1.1.1.6 Continue to provide transparency for the community regarding the information being considered in decision making processes.

Risk Management

Failure to undertake an annual review of the remuneration figures of the Committee's independent members will result in a breach of the Committee's Charter. Any potential breaches will not represent any legal or financial damage to Council.

Risk Management Framework

Risks	Likelihood	Consequence	Rating	Mitigation Action
Failure to conduct a formal review of the remuneration allowances for	2 – Unlikely	Insignificant	3 – Low	A standing item for a formal review is provided for in the Committee's

independent members of the Committee resulting in a breach of the Charter				Annual Work Plan
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Consultation/Communication

No community consultation is required. Consultation with governance colleagues across regional Victorian councils was undertaken to inform the proposed increase. Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Options for Consideration

Council may either elect to keep the current remuneration figure (not recommended) or provide an increase to provide remuneration more consistent with other similar councils (recommended).

Conclusion

The Audit and Risk Committee Charger requires independent member remuneration to be reviewed annually and a benchmarking exercise has been completed. It is appropriate to provide an increase to independent member remuneration levels for the Rural City of Wangaratta, to ensure they remain between the levels paid by smaller rural and larger metro councils.

Attachments

Nil

13.2 September Scheduled Council Meeting - Date Change (41:10)

Meeting Type: Scheduled Council Meeting
Date of Meeting: 28 May 2024
Author: Governance & Reporting Advisor

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to formally resolve to change the dates of the September Scheduled Council Meeting.

Council resolved at the March 2024 Scheduled Council Meeting to bring the September 2024 Scheduled Council Meeting forward one week to ensure all council reports could be adopted by the caretaker period, which was previously set for 24 September 2024 at 12:00pm. The Victorian Electoral Commission has subsequently confirmed that the caretaker period will now come into effect on Tuesday 17 September at 12:00pm.

Under 9.1(2) of Council's Governance Rules, Council may, by resolution or by the CEO directly, resolve to change the date, time or place of any Scheduled Council Meeting. A public notice to this effect must be provided as soon as practicable after the resolution.

Resolution:

(Moved: Councillor D Fuller/Councillor A Fitzpatrick)

That Council changes the date of the September Scheduled Council Meeting to Monday 16 September at 6.00pm.

Carried

Attachments

Nil

14. Community and Infrastructure

Nil

Unconfirmed

15. Sustainability and Culture

15.1 Road Deviation and Land Exchange at Old Hume Highway Glenrowan (42:24)

Meeting Type:	Scheduled Council Meeting
Date of Meeting:	28 May 2024
Category:	Strategic
Author:	Manager Statutory Services
Approver:	Director Sustainability and Culture

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

The completed subdivision of land at 246 Old Hume Highway, Glenrowan requires a road deviation to accommodate an existing dwelling constructed partly within a road reserve. This report deals with the statutory process to formalise the required road deviation.

- 1) This report is presented to Council to seek Council's approval to:
 - a) Enter into a heads of agreement with Warby Range Estate Pty Ltd CAN 144 806 717 (**Adjoining Owner**) regarding the proposed Road Deviation and Land Exchange as defined at paragraphs 3), 4) and 9) of this report;
 - b) commence the statutory procedures to consider carrying out the Road Deviation and Land Exchange; and
 - c) advertise and invite public submissions on the Proposed Road Deviation and Land Exchange under sections 207A and 223 of the *Local Government Act 1989 (LGA1989)* and section 114 of the *Local Government Act 2020 (LGA2020)*.

Resolution:

(Moved: Councillor H Bussell/Councillor D Fuller)

That Council:

1. Enters into a heads of agreement with Warby Range Estate Pty Ltd ACN 144 806 717 (Adjoining Owner) to document the 'in principle' agreement between the parties regarding the:
 - a) proposed road deviation of part of the government roads abutting 246 Old Hume Highway, Glenrowan (Roads), which comprise the following:
 - i) the part of the Roads shown cross-hatched and coloured blue on the site plan

- attached to this report at Attachment 1 (Unused Road), which will be discontinued and vest in Council; and
- ii) the part of the Roads shown hatched and coloured orange and pink on the site plan attached to this report (Constructed Road), which will be designated as a "road" and vested in Council,
- (together, the Road Deviation); and
- b) the transfer of the Unused Road to the Adjoining Owner (Land Exchange), subject to Council carrying out the necessary statutory procedures required by Council to proceed with the proposed Road Deviation and Land Exchange.
2. Commences the statutory procedures to carry out the Road Deviation referred to at paragraph 1(a), pursuant to clause 2 of Schedule 10 and sections 206, 207 and 223 of the *Local Government Act 1989*.
3. Commences the statutory procedures to carry out the Land Exchange referred to at paragraph 1(b), pursuant to section 114 of the *Local Government Act 2020*, such Land Exchange being subject to the completion of the Road Deviation;
4. Authorises the Chief Executive Officer to:
- a) give public notice of the proposed Road Deviation and Land Exchange for a period of 28 days, pursuant to sections 207A and 223 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020*; and
- b) undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020* in relation to this matter.
5. Considers any public submissions received in respect of the proposed Road Deviation and Land Exchange at a future Council meeting with a date and time to be determined, pursuant to section 223 of the *Local Government Act 1989* and Council's community engagement policy.

Carried

Background

- 2) This matter arises out of a subdivision of land known as 246 Old Hume Highway, Glenrowan. Planning permit PInApp18/160 allowed for subdivision of this land in stages. To facilitate the subdivision a road deviation was needed due to the existing dwelling remaining partly within an existing road reserve (see aerial photograph below taken in 2017).



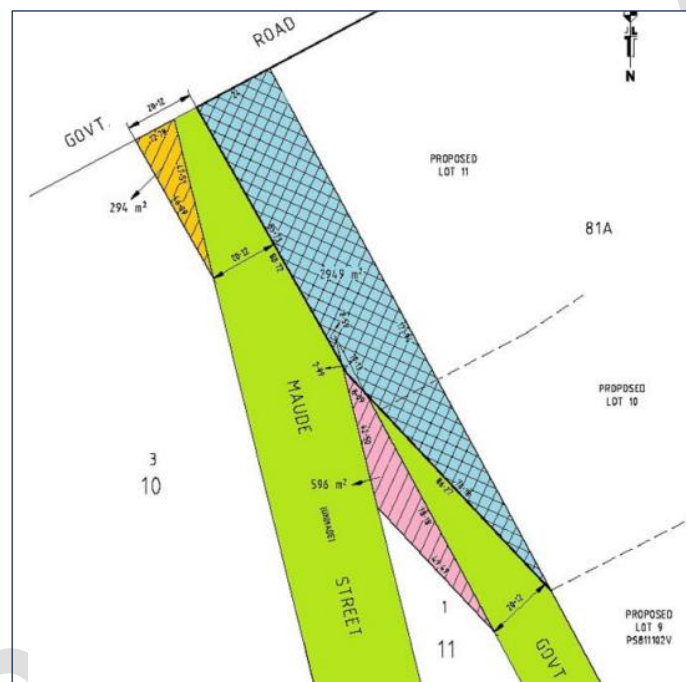
The aerial photograph below taken in 2022 shows the constructed road was deviated away from the dwelling.



This report details the required statutory process to formalise the road deviation under the required legislation.

- 3) The physically constructed government road known as Maude Street, Glenrowan and an unnamed government road (together, the **Roads**), which abut properties owned by Warby Range Estate Pty Ltd ACN 144 806 717 (**Adjoining Owner**), do not accord with the title boundaries of those Roads as shown on the relevant certificates of title. Specifically:
 - a) parts of the Roads are constructed on:

- i) the land contained in certificate of title volume 10907 folio 931 (as shown coloured orange and hatched on the Site Plan below and attached to this report at **Attachment 1 (Site Plan)**); and
 - ii) the land contained in Crown grant volume 5059 folio 797 (shown coloured pink and hatched on the Site Plan),
- (together, the **Constructed Road**); and
- b) part of the Roads are fenced within the land contained in certificate of title volume 12323 folio 190 where the existing dwelling is located, as shown cross-hatched and coloured blue on the Site Plan (**Unused Road**).



Site Plan

- 4) Council has agreed to consider deviating the Roads at law, from the Unused Road on to the Constructed Road (Road Deviation), by exercising its power under clause 2 of Schedule 10 of the *Local Government Act 1989*.
- 5) Council's power to deviate roads under clause 2 of Schedule 10 of the *Local Government Act 1989* is subject to Council complying with its statutory obligations in accordance with section 223 of the *Local Government Act 1989* in respect of the Road Deviation.

- 6) As the Roads are government roads (which if the Road Deviation is completed would result in the vesting of former Crown land in Council pursuant to section 207B(2A) of the *Local Government Act 1989*), Council is required to obtain the consent of the Minister administering the *Land Act 1958*, pursuant to clause 2(2) of Schedule 10 to the *Local Government Act 1989*.
- 7) Council has obtained the consent of the Department of Environment, Energy and Climate Change (**DEECA**), as delegate for the Minister for Environment, to the Road Deviation.
- 8) If the Road Deviation is completed, its effect will be to:
 - a) designate the Constructed Road as a “road” for the purpose of the *Local Government Act 1989*, which will vest in Council at law; and
 - b) vest the Unused Road in Council at law, pursuant to section 207B(2A) of the *Local Government Act 1989*.
- 9) Subject to Council making a decision to undertake the Road Deviation, the parties have agreed to realign the title boundaries of the Adjoining Owner’s properties, so that they are consistent with the location of the Government Roads (as constructed) and the parties current use and occupation, as follows:
 - a) the Unused Road will be transferred from Council to the Adjoining Owner;
 - b) the title to the Constructed Road will be registered in Council’s name; and
 - c) the parties will submit an application in a form required by Land Registry with effect that the title boundaries of the Adjoining Owner’s properties will be realigned to reflect the new boundaries between the Adjoining Owner’s properties and the Constructed Road,
(together, the **Land Exchange**).
- 10) A copy of the proposed survey plan which shows the Road Deviation and Land Exchange is attached to this report as **Attachment 2**.
- 11) Council has the power to complete the Land Exchange, subject to complying with its statutory obligations under section 114 of the *Local Government Act 2020*.
- 12) The parties have agreed to enter into a heads of agreement to document the “in principle” agreement of the parties, subject to Council:

- a) complying with its statutory obligations in respect of the proposed Road Deviation and Land Exchange; and
- b) making a decision to proceed with the Road Deviation and Land Exchange.

Implications

Policy Considerations

This matter has been considered to be in line with the required legislation including the *Planning and Environment Act 1987*, *Road Management Act 2004* and the *Local Government Acts 1989 and 2020*.

Financial/Economic Implications

- 13) Council and the Adjoining Owner have agreed that no monetary consideration is payable for the transfer of the Unused Road to the Adjoining Owner and the Constructed Road will vest in Council pursuant to the Road Deviation.
- 14) The Adjoining Owner has paid the costs in connection with the Road Deviation and Land Exchange.

Legal/Statutory

Other than Council's obligations to comply with its statutory obligations as outlined in this report, there are no legal/statutory implications identified for the subject of this report.

Social and Diversity

There are no social impacts identified for the subject of this report.

Equity Impact Assessment (EIA)

There are no equity impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for the subject of this report.

Strategic Links

Council Plan 2021 – 2025

This report supports the 2021-2025 Council Plan through the following objectives and actions:

1. Strengthening our Leadership

Provide open and transparent communication to the community to build trust, respect and understanding.

2. Growing with Integrity

Facilitate long term residential growth opportunities.

Rural City of Wangaratta 2033 Community Vision

This report supports the 2033 Community Vision through the following objectives:

- An effective and efficient Council
- The right growth in the right areas

Other Policies and Strategies

Council Land Disposal Policy 2023

Risk Management

Risks	Likelihood	Consequence	Rating	Mitigation Action
Council doesn't approve proposal	low	moderate	3	Revise proposal
Landowners can't get a title and therefore build	medium	moderate	3	Revise proposal

Consultation/Communication

- 15) Council has been liaising with the Adjoining Owner (being the only landowner directly affected by the Road Deviation) in respect of the Road Deviation since the subdivision was proposed in 2018.
- 16) Council proposes to enter into an agreement with the Adjoining Owner to document the "in principle agreement" between the parties for the Road Deviation and Land Exchange.
- 17) Council must give public notice of the proposed Road Deviation and Land Exchange in accordance with section 207A of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020*, and consider any submissions received in accordance with section 223 of the *Local Government Act 1989* and Council's community engagement policy.
- 18) Council will consider any public submissions at a future Council meeting.

Options for Consideration

- 19) Council may either:

- a) resolve to commence the statutory procedures to proceed with the Road Deviation and Land Exchange (**Proposal**); or
- b) resolve not to proceed with the Proposal.

Conclusion

- 20) For the reasons set out in this report, it is recommended that Council proceed with the Proposal as set out in the Recommendation.

Attachments

- 1 Attachment 1 - Site Plan 
- 2 Attachment 2 - Survey plan of road deviation 

15.2 Report for noting: Procurement Exemptions for Development Contributions Plan Projects (44:10)

Meeting Type:	Scheduled Council Meeting
Date of Meeting:	28 May 2024
Category:	Strategic
Author:	Director Sustainability and Culture
Approver:	Director Sustainability and Culture

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

The purpose of this report is to notify Council that the Chief Executive Officer (CEO) has approved an exemption from the public tender requirements of Council's Procurement Policy for the upgrade of a section of Christensen Lane by the developers of adjacent land in lieu of required contributions (known as Works-in-Kind) under a Development Contributions Plan (DCP).

The upgrade of Christensen Lane is identified as an infrastructure project approved for delivery within the Wangaratta North-West Growth Area DCP. Council's Procurement Policy (see **Attachment 1**) requires a report to be presented to Council for noting when an exemption of this nature is approved.

Recommendation:

(Moved: Councillor I Grant/Councillor H Bussell)

That Council:

1. Notes the procurement exemption approved by the CEO to facilitate the upgrade of a section of Christensen Lane under the North-West Growth Area Development Contributions Plan and as required by Council's Procurement Policy.
2. Notes a specific exemption for similar future Development Contributions Plan projects to be delivered as Works-in-Kind will be considered for inclusion in Council's Procurement Policy when it is next reviewed.

Carried

Background

Council has two approved DCPs for the North-West and South Growth Areas. These DCPs identify infrastructure projects required to service the growth areas and for which development contributions must be paid by land owners in these areas.

In some cases the DCP projects are delivered by developers as Works-in-Kind in exchange for the associated credits identified for the project in the DCP.

DCP projects delivered as Works-in-Kind do not trigger the requirement under the *Local Government Act 2020* to comply with Council's Procurement Policy. However, there are instances where the final form of DCP projects are not entirely consistent with the DCP but remain closely connected to the DCP project and arise naturally from the scope of the DCP project, such as variations due to detail design or construction standards. Council has received legal advice that in these instances Council may still not be required to comply with its Procurement Policy depending on the specifics of each project.

One such instance has recently arisen relating to the upgrade of a section of Christensen Lane as required by the DCP and the CEO has approved an appropriate exemption under the Procurement Policy to remove any uncertainty about compliance with the policy and the Local Government Act.

Council's Procurement Policy identifies a number of circumstances that are exempt from public tendering and other competitive processes. Council's CEO has the authority to consider and decide requests for such exemptions. The category of exemption available for DCP projects under the circumstances described above is 'Exceptional Circumstances' as the other available categories do not apply. The policy requires a report to be presented to Council for noting when an exemption is approved under the 'Exceptional Circumstances' category.

Similar circumstances are likely to occur again as part of the development of Wangaratta's Growth Areas and officers will consider adding a specific category of exemption to the Procurement Policy when the policy is next reviewed to help facilitate the intended infrastructure outcomes of the DCPs.

Implications

Policy Considerations

The following Council policies or strategies that relate to this report:

- Wangaratta North-West Growth Area Development Contributions Plan
- Procurement Policy

Financial/Economic Implications

There are no financial implications for Council identified for the subject of this report as the relevant DCP project is delivered as Works-in-Kind by developers using available DCP credits. No Council funding is involved.

DCPs identify Works-in-Kind as a preferred mechanism to deliver most projects identified in the DCPs. Appropriate exemptions under the Procurement Policy help to facilitate delivery of these previously considered and approved projects using this preferred mechanism and in a timely manner i.e. when the projects are required to support approved development.

Legal/Statutory

- *Planning and Environment Act 1987* as it relates to Development Contributions.
- *Local Government Act 2020* as it relates to procurement.
- Wangaratta Planning Scheme.

Social and Diversity

DCP infrastructure projects support residential development in approved Growth Areas to help meet the housing needs of our community.

Environmental/Sustainability Impacts

There are no environmental/sustainability impacts identified for the subject of this report.

Strategic Links**Council Plan 2021 – 2025**

This report supports the 2021-2025 Council Plan through the following objectives and actions:

1. Growing with Integrity

- Facilitate attractive long-term residential growth opportunities.
- Ensure a range of housing options to meet the needs of the community, including affordable housing.
- Sustainable infrastructure that supports new growth.
- Provide an efficient and effective permit system.

Rural City of Wangaratta 2033 Community Vision

This report supports the 2033 Community Vision through the following objectives:

- The right growth in the right areas

Other strategic links

This report supports the implementation of the North-West Growth Area Structure Plan and Development Contributions Plan.

Risk Management

Risks were considered prior to approving the procurement exemption including:

- undertaking analysis of proposed works and rates to ensure they represented value for money and are consistent with the intended outcomes of the DCP.
- requiring the proposed works to be in accordance with an approved detail design.

Conclusion

Council's CEO has approved an exemption from the public tender requirements of Council's Procurement Policy to facilitate the upgrade a section of Christensen Lane by the developers of adjacent land in lieu of required contributions under a DCP. The policy requires a report to be presented to Council for noting when such an exemption is approved by the CEO.

Attachments

- 1 Council's Procurement Policy 

16. Special Committee Reports

Nil

17. Advisory Committee Reports

Nil

18. Minutes of Advisory Committee Meetings

Nil

19. Notices of Motion

Nil

20. Urgent Business

Unconfirmed

21. Public Question Time (46:46)

For full transcript, please refer to the recording on the [Rural City of Wangaratta YouTube channel](#).
Time markers are noted at each question in minutes:seconds format.

21.1	<p>Dorothy Fox (46:50)</p> <p>Question 1: An idea comes to mind of the significance and importance of being proud of our town for various reasons. Would our Council consider placing our National flag only in prominent positions of which I recommend four.</p> <ol style="list-style-type: none"> 1. North bound roundabout at Murphy/Faithful 2. South bound roundabout at Murphy/Ford 3. Snow Road roundabout at Oxley 4. Strongly recommend the very busy intersection between the High School and Galen College. <p>These positions would give many people a constant feeling of pride and also emotional impact on a day the Flag would be at half mast for various reasons. Our Country is experiencing very troubled times, hence, the importance of knowing what we stand for must never be lost.</p> <p><i>Mayor Dean Rees responded: Thank you for your suggestion Dot. Your request will need Council consideration as well as funding allocation. We will treat your email as a budget submission. If you wish to speak to your submission, please get in touch with our Executive Services Team who will be able to schedule a timeslot for you during our Hearing of budget submissions on the 11 June, otherwise it will still be treated as a budget submission in writing.</i></p>
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22. Confidential Business

Nil

23. Closure of Meeting

The Meeting closed at 3:50pm.